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BEFORE THE PUBLIC DISCLOSURE COMMISSOIN
OF THE STATE OF WASHINGTON

IN THE MATTER OF ENFORCEMENT
ACTION AGAINST

Jefferson County Republican Central
Committee,

Respondent.

PDC CASE NO. 04-288

TRIAL BRIEF

I. INTRODUCTION

“Mark Rose claimed to be a staff member of the *LA Times*, when all he did was write a letter to the editor.” The Jefferson County Republican Central Committee (JCRCC) leveled this accusation against candidate Mark Rose in a political advertisement it sponsored in the 2003 Jefferson County Commissioner’s race. The statement is a materially false statement of fact and therefore violates RCW 42.15.350 because 1) Mark Rose was an employee at the *LA Times*, and 2) he never wrote a letter to the editor of the *LA Times*. Staff’s inquiry and filing of charges in this case is limited to this statement sponsored by the JCRCC. The Commission must only consider what the JCRCC actually did say, and not what it might argue it was attempting to say. RCW 42.15.530 required the JCRCC to consider the real facts before sponsoring this statement in a political advertisement.

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II. STATEMENT OF FACTS¹

A. Procedural History

Staff received a complaint on October 17, 2003 alleging the JCRCC had sponsored a political advertisement containing a materially false statement in violation of RCW 42.17.530. The Complaint alleged the following statement was materially false: "Mark Rose claimed to be a staff member of the *LA Times* when all he did was write a letter to the editor." Staff member Sally Parker investigated whether this statement was true or false. Following an investigation, Staff filed charges against the JCRCC, alleging the committee violated RCW 42.17.530 by sponsoring a political advertisement against a candidate, which contains a false statement of material fact with actual malice. The hearing on this charge is currently set for October 26, 2004.

B. Facts

Mark Rose was the Democratic candidate for the position of Jefferson County Commissioner, District 3 in the 2003 election. Mr. Rose's employment history became a material issue in the campaign, including whether he was employed at the *LA Times*. The issue was 1) widely discussed in the community, 2) a topic at candidate forums, and 3) the subject of several local news articles appearing in community newspapers.

On August 27, 2003, an article in the *Port Townsend & Jefferson County Leader* (*Leader*) reported that:

Rose provided the *Leader* a clip file of about two years of writing during the 1980s and 1990s. Rose was a freelance contributor for the *New York Times* and an editorial staff employee at the *Los Angeles Times*. In addition, he wrote a column for the *New York Press*, a free weekly publication.

The evidence in this case will show that this article was seen and reviewed by the JCRCC prior to the development and subsequent airing of its political advertisement.

¹ The stipulation of facts between the parties is incorporated by reference herein.

1 On September 3, 2003, an editor's note was included in a letter to the editor of the
2 *Leader* questioning Mr. Rose's employment with the *LA Times*. The editor's note stated, "In
3 terms of his experience as a journalist, we have confirmed that Mr. Rose was on the staff of the
4 Los Angeles Times and was a free-lance writer for the New York Times. He was on the staff
5 of at least one other media outlet in New York City."

6 On September 12, 2003, an editor's note to a letter to the editor from Mr. Rose,
7 appearing in the *Peninsula Daily News*, stated, "Peninsula Daily News has confirmed that Rose
8 was on the staff at the Los Angeles Times and wrote free-lance articles that were published by
9 the New York Times." Cumulatively, these articles put the JCRCC on notice that Mr. Rose
10 was a staff member of the *LA Times* and did more than only write a letter to the editor.

11 The JCRCC sponsored a television political advertisement against Mr. Rose, which
12 became known as the "Pinocchio Rose" advertisement. The advertisement voice over stated:

13 Mark Rose tells newspapers he went to New York University, then admits he
14 has a high school education.

15 Mark Rose claimed to be a staff member of the *LA Times* when all he did was
16 write a letter to the editor.

17 Mark Rose portrays himself as a success, yet records show he owes back taxes
18 in California and has few assets.

19 Is this the leadership we want for the highest office in Jefferson County?

20 Consider the real facts before you vote. Mark Rose is bad news for Jefferson
21 County.

22 Paid for by Jefferson County Republican Central Committee.

23 The advertisement contained a still photo of Mr. Rose, and the nose on the picture grew with
24 each accusation in the advertisement. A caption above the photo stated "Is Mark Rose Lying?"

25 The evidence at hearing will show that the JCRCC was responsible for the wording and
26 content of the advertisement. JCRCC Chairman Ron Gregory was appointed to lead the
advertising campaign for the JCRCC. Mr. Gregory purchased airtime for the advertisement
from Comcast Advertising Sales shortly before October 9, 2003. The advertisement ran on

1 local Comcast stations for the first time on October 16, 2003. It aired 400 times on eight
2 different local cable channels between October 16 and November 3, 2003. The day after the
3 advertisement was first aired, Staff received a complaint alleging the statement regarding Mr.
4 Rose's employment with the *LA Times* violated RCW 42.17.530. Staff immediately began an
5 investigation.

6 On October 22, 2003, a *Leader* article stated that "According to LA Times Personnel
7 Department, Mark Rose was an employee of that company from April 26, 1982- Dec. 6, 1982."
8 The article also stated that Mr. Rose had provided the *Leader* a clip file that "included about
9 six pieces from the LA Times." Evidence in this case will show that when contacted by the
10 *Leader* for the October 22, 2003 article, Mr. Gregory did not request to see the clip file articles
11 in the possession of the *Leader* documenting Mr. Rose's work appearing in the *LA Times*.

12 The Human Resources Department of the *LA Times* has confirmed that Mark Rose was
13 employed at the *LA Times* from April 26, 1982 until December 6, 1982. Evidence will show
14 that no member of the JCRCC contacted the *LA Times* to verify if Mr. Rose had been
15 employed at the paper. The evidence will show that no member of the JCRCC contacted Mr.
16 Rose or any member of his campaign staff to discuss Mr. Rose's employment with the *LA*
17 *Times* or ask to see copies of articles written by Mr. Rose while at the paper. Additionally, the
18 evidence will show that no member of the JCRCC has ever produced any evidence of a letter
19 to the editor of the *LA Times* written by Mr. Rose.

20 The JCRCC claims the statement is accurate based on information contained in a fax
21 dated October 17, 2003 from a former editor at the *LA Times*, Noel Greenwood. Evidence will
22 show that no one from the JCRCC ever spoke personally with Noel Greenwood or followed up
23 on the information provided by Mr. Greenwood. The evidence will show that JCRCC member
24 Leola Armstrong asked her husband, Bryn Armstrong, to contact Mr. Greenwood. Mr.
25 Armstrong and Mr. Greenwood had worked together at the *Las Vegas Sun*. The evidence will
26 show that Mr. Greenwood provided information over the telephone to Mr. Armstrong, which

1 was verbally relayed to his wife, which was verbally relayed to the JCRCC and became the
2 sole basis of support for the statement in the advertisement. Yet, even though the fax notifies
3 the JCRCC that a search of employee personnel records had not been completed, no one from
4 the JCRCC followed up on this warning from Mr. Greenwood.

5 III. ISSUE

6 Whether the JCRCC, with actual malice, sponsor a political advertisement containing
7 a false statement of material fact about Mark Rose in violation of RCW 42.17.530, and if so
8 what is the appropriate penalty?

9 IV. LEGAL ARGUMENT

10 Staff will prove, by clear and convincing evidence, that the JCRCC sponsored, with
11 actual malice, political advertising that contained a false statement of material fact about Mark
12 Rose, in violation of RCW 42.17.530(1):

13 False political advertising.

14 (1) It is a violation of this chapter for a person to sponsor with actual malice:

15 (a) Political advertising that contains a false statement of material fact about
16 a candidate for public office. However, this subsection (1)(a) does not apply
17 to statements made by a candidate or the candidate's agent about the
candidate himself or herself; ...

18 RCW 42.17.530(1)(a). Actual malice is defined as "to act with knowledge of falsity, or with
19 reckless disregard as to truth or falsity" of the statement. RCW 42.17.505.

20 A. Burden of Proof

21 According to RCW 42.17.530, Staff must, and will, prove its case by clear and
22 convincing evidence. Clear and convincing evidence "means that the proposition must be
23 proved by evidence that carries greater weight and is more convincing than a preponderance
24 of evidence. However, it does not mean that the proposition must be proved by evidence that
25 is convincing beyond a reasonable doubt." See WPIC 160.02; *In re Deming*, 108 Wn.2d 82,
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1 736 P.2d 639 (1987); *see also Miller v. Argus Publ'g. Co.*, 79 Wn.2d 816, 828, 490 P.2d 101
2 (1971) (The constitutional requirement of clear and convincing proof does not demand
3 conclusive evidence of knowing or reckless falsity). Staff will prove by clear and convincing
4 evidence that the JCRCC had knowledge of Mr. Rose's employment with the *LA Times*, that
5 the information was easily accessible, and the JCRCC did not take the most basic of steps to
6 confirm the accuracy of its allegations. Staff will also prove, by clear and convincing
7 evidence, that the JCRCC's statement regarding a letter to the editor of the *LA Times* has no
8 basis in fact.

9 **B. Elements of Charge**

10 A violation of RCW 42.17.530 requires (1) a false statement, (2) of material fact, (3)
11 sponsored with actual malice. Staff will prove the statement was false because Mr. Rose (1)
12 was, in fact, employed at the *LA Times* from April 26, 1982 until December 6, 1982, (2) wrote
13 several articles that appeared in the *LA Times* in which the newspaper self-identified him as
14 "Times editorial staff member" or "Times editorial employee," and (3) never wrote a letter to
15 the editor of the *LA Times*.

16 Staff will prove this was a material fact in the campaign because the issue was (1)
17 addressed in several articles appearing in the local newspapers, (2) discussed at candidate
18 forums during the campaign, and (3) one of only three issues the JCRCC chose to highlight in
19 its only television advertisement.

20 Finally, Staff will prove with clear and convincing evidence that the advertisement
21 was sponsored with actual malice, because (1) several articles in local newspapers confirmed
22 Mr. Rose's employment with the *LA Times*, (2) the JCRCC failed to take the most basic steps
23 to confirm the accuracy of its accusations, and (3) the JCRCC continued to run the
24 advertisement even after it knew the accusation was false.

25 **i. False statement**
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1 The statement made by the JCRCC about Mark Rose's employment with the *LA Times*
2 is false on several bases. The statement says, "Mark Rose claimed to be a *LA Times* staff
3 member, when all he did was write a letter to the editor." The statement implies Mr. Rose
4 was never employed at the *LA Times*. It is common knowledge that letters to the editor are
5 written by the general public. The statement informs the reader or listener that Mr. Rose
6 never worked at the *LA Times* and all he did was write a letter to the editor of the paper as a
7 member of the general public.

8 However, the parties have stipulated that Mr. Rose was employed by the *LA Times*
9 between April 26, 1982 and December 6, 1982. Second, articles appearing in the *LA Times*
10 referred to Mark Rose as either "*Times* editorial staff member" or "*Times* editorial
11 employee."² The existence of these articles proves that Mr. Rose did more than simply write
12 a letter to the editor. Finally, Mr. Rose will testify that he never wrote a letter to the editor of
13 the *LA Times*.

14 **ii. Materiality**

15 Whether a statement is material to any particular campaign is a question of fact for the
16 Commission to determine. What may be material in one campaign could mean nothing in the
17 next. Mr. Rose's employment with the *LA Times* became a material issue in the campaign.
18 His employment was reviewed by the *Leader* and was the subject of several articles published
19 during the campaign. In fact, the presence of the allegation in the only television commercial
20 produced by the JCRCC as one of only three issues discussed in the commercial indicates that
21 the JCRCC considered the issue material enough to pay to comment on it. Evidence will also
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24 ² It should be noted that the term "editorial" is a general classification. The editorial section of a
25 newspaper refers to all sections that provide content. The editorial section excludes departments such as
26 advertising, circulation, and human resources. However, the metro section as well as the travel section are
components of the editorial section. The terms "editorial board" and "editorial section" are distinct terms. The
editorial board is a specific section of the editorial department.

1 demonstrate that the issue was regularly discussed at candidate forums and was widely known
2 and discussed among members of the community.

3 **C. Actual Malice**

4 Actual malice, as used in RCW 42.17.530, is defined in RCW 42.17.505. Actual
5 malice is a legal term of art which means "acting with knowledge of falsity or the reckless
6 disregard of the truth or falsity of the statement made." The Commission has applied the
7 actual malice standard in cases in the past, under the predecessor to the current version of
8 RCW 42.17.530. In *In re Citizens for a Better Redmond/Conklin*, PDC Case No. 92-194, the
9 Commission determined that the political committee acted with actual malice because "they
10 acted in reckless disregard of whether the statements were true when even a brief review of
11 readily available information would have demonstrated that they were false." PDC Case No.
12 92-194 at 8. In evaluating this claim, the Commission considered the statements made and the
13 limited amount of review of "readily available" information that could have cleared up any
14 falsity. In that case, the Commission ordered a \$2,000 penalty for the multiple violations of
15 RCW 42.17.530.

16 In *In re Eric Robertson*, PDC Case No. 95-077, the Commission determined that the
17 Respondent violated RCW 42.17.530 again with actual malice because he had been told by
18 his opponent on several occasions about her voting record and yet still published the false
19 statements about her.³

20 Staff witnesses will demonstrate that simple steps would have verified the falsity of
21 the claims asserted in the advertisement sponsored by the JCRCC. Evidence will show that

22 ³ The Commission has considered two other false advertising cases but under other provisions of RCW
23 42.17.530. In *In re Affordable Housing Council*, PDC Case No. 96-101, the Commission determined that the
24 Council had issued a deceptive ad that falsely let the reader believe that one candidate had the endorsement of
25 the King County Council, when in fact such was not the case. The Commission ordered a \$500 penalty for
26 violating RCW 42.17.530. In the only decision under RCW 42.17.530 since the law was rewritten, *In re Cheryl
Chow for Mayor Campaign*, PDC Case No. 98-190, the Respondent stipulated to violating RCW 42.17.530 by
publishing a campaign brochure that inferred that two individuals she was photographed with endorsed her
campaign. She also stipulated to \$1,000 penalty for this behavior.

1 the JCRCC never contacted the *LA Times* directly to inquire whether Mr. Rose had been
2 employed at the newspaper. Evidence will show that several articles in the newspaper said
3 that Mr. Rose had been employed with the newspaper. Even the fax from Mr. Greenwood,
4 which the JCRCC says was the source of its information for the statement, says "a search of
5 employee personnel records has not yet been completed." Evidence will show that the
6 JCRCC never followed up with the *LA Times* personnel department, despite this disclaimer by
7 Mr. Greenwood. The evidence will also show that even after being questioned about the truth
8 and accuracy of the statement by Staff, the JCRCC continued to allow the advertisement to
9 run and conducted no further investigation into the truth or falsity of the statement.

10 Finally, evidence will show that there is absolutely no merit to the claim Mr. Rose
11 wrote a letter to the editor at the *LA Times*. Evidence will show that the JCRCC never saw a
12 copy of a letter to the editor. Cumulatively, the actions of the JCRCC or more appropriately
13 stated, inaction, constitute actual malice on behalf of the JCRCC. At a minimum, the JCRCC
14 acted with reckless disregard for the truth or falsity of the statement it sponsored in the
15 advertisement.

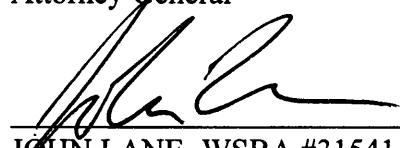
16 V. CONCLUSION

17 RCW 42.17.530 makes it a violation to sponsor a political advertisement that contains
18 a false statement of material fact about a candidate for public office. The only statement at
19 issue in this case is: "Mark Rose claimed to be a staff member for the *LA Times* when all he
20 did was write a letter to the editor." The statement is materially false and was made with
21 actual malice, knowledge of the falsity or with reckless disregard. Mr. Rose never wrote a
22 letter to the editor of the *LA Times*. He certainly did more than this because he authored
23 articles that appeared in the *LA Times* where he was self-identified by the newspaper as
24 "*Times* editorial staff member" or "*Times* staff member." Moreover, personnel records verify
25 that he was employed at the *LA Times* from April 27-December 6, 1982.

1 The JCRCC either knew of the falsity or acted with reckless disregard. It never took
2 the most basic and obvious step of contacting the *LA Times* directly to inquire into Mr. Rose's
3 employment with the paper. It never contacted Mr. Rose and asked to see copies of his
4 articles. In fact, several articles in the local newspapers put the JCRCC on notice that it
5 needed to carefully consider the truth or falsity of its accusations. Finally, even after being
6 challenged about the accuracy of the statement once the advertisement aired, the JCRCC did
7 nothing to attempt to confirm the accuracy of the statement and allowed the false statement to
8 continue to appear on local cable stations. The JCRCC violated RCW 42.17.530 because it
9 failed to consider the real facts when sponsoring this statement about Mark Rose.

10 DATED this 18th day of October, 2004.

11
12 CHRISTINE O. GREGOIRE
Attorney General

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14 
15 JOHN LANE. WSBA #31541
16 Assistant Attorney General
17 Attorneys for Commission Staff
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